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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note verbale dated 12 August 1994 from the Permanent Mission of Peru to the United Nations Office at Geneva addressed to the Centre for Human Rights

The Permanent Mission of Peru to the Office of the United Nations and other International Organizations at Geneva presents its compliments to the Centre for Human Rights and requests it to circulate the attached document as an official document of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under agenda item 6.

AIDE-MEMOIRE

The Government of Peru considers that any meaningful and effective perception of the true facts concerning human rights in the world today must take into account a series of factors closely related to the promotion and protection of human rights, factors which in many instances have not been evident when considering various situations. In this connection, the Government of Peru, together with the majority of Latin American countries, has on many occasions and in many forums stressed the capital importance of the subject of development rights as a way of reminding the international community that, although the issue of human rights represents a threat to international security, it is not divorced from a global problem that affects developing countries and basically calls for international cooperation.

With this objective in view, the Peruvian Government has constantly underlined the need to achieve a balance or equilibrium in dealing with civil and political rights, as well as economic, social and cultural rights, and to strengthen and give effect to the principles of universality, impartiality and non-discrimination as a way of contributing towards balanced and realistic treatment of human rights.

TERRORISM VIOLATES HUMAN RIGHTS

Along the same lines, in recent years the Government of Peru has drawn the attention of the international community to the scourge of terrorism, which violates human rights and shows contempt that hampers and impedes the efforts of democratic societies to work towards development. As demonstrable proof of the fluidity and evolution of doctrinal concepts, sometimes considered to be static and unyielding as a result of perceptions which could be termed interested, the international community at the General Assembly (Resolution 48/22), the Commission on Human Rights (Resolution 1994/46), as well as in Resolutions 1993/13 and 1993/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, has recognized that terrorism violates human rights.

The political violence unleashed by terrorism in Peru for the past 14 years, the number of victims caused by its violent acts, the sizeable economic prejudice caused, the negative repercussions on society as a whole, the generalized feeling of terror and lack of protection prevalent in Peruvian society for many years, the disastrous consequences for an entire generation of children and adolescents who have experienced and suffered from terrorist action by one of the most bloodthirsty groups of all time, the paralysis of the Judiciary, terrified by threats of terrorism which boasts of its invincibility, are some of the tragic effects of terrorist violence in Peru. Until a few years ago, Peru was a country without a future, ungovernable, incapable of satisfying the basic needs of society, a country that was disintegrating. This situation was exacerbated on the one hand by a disastrous economic situation which made it impossible to make any short-term forecast and, on the other, by the detrimental presence of drugs trafficking, the ally and financial support of terrorism.

It is important to mention briefly that during the last 14 years terrorism did nothing but combat the determination and firm intent of the Peruvian people to develop. The stagnation of agriculture in many rural areas of Peru was an imperative for terrorism and those mostly affected were poor peasants for whom directly working the soil represents the only possibility for survival. The destruction of schools and medical posts in the most depressed areas of Peru was also a constant feature of terrorism. Neither should one forget bomb attacks against high-tension electricity pylons, railways, hydroelectric stations, oil pipelines, bridges, factories and shopping centres, banks and hotels. Even though such attacks can be quantified, they can in no way be compared with the thousands of victims caused by this abominable phenomenon in Peru.

When the Government of Peru affirms that terrorism violates human rights, it does so advisedly. Thousands of orphans and widows, the indigenous peoples in the Peruvian jungle, peasants subject to mass kidnapping, the opportunities lost to an entire country throughout 14 years of terrorist violence are proof of this and go beyond traditional theories which fail to apprehend the magnitude of the tragedy and utilize a wide variety of adjectives and conceptualization.

PACIFICATION AND HUMAN RIGHTS IN PERU: A NEW SITUATION

The situation in Peru has changed. Terrorism is being defeated by means of a complex process of pacification which, in addition to its military component, has deployed efforts in the political, economic, social and juridico-legal fields.

The Centre for Human Rights has been informed of this and is aware of the improvements which have taken place in Peru. These have also been recognized or can be seen in the reports submitted by the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, the Special Rapporteur on the Question of Torture and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, during the 50th Session of the Commission on Human Rights. This ongoing and irreversible improvement has also been recognized by international organizations working in the area of human rights, as well as by international and national non-governmental organizations.

The Peruvian Government is aware that certain problems still subsist with regard to human rights, but it has publicly proclaimed its determination to find a satisfactory solution within the framework of a comprehensive national pacification policy whose final objective is to lay the bases for the human development of Peruvian society.

The human rights situation in Peru has improved considerably and the successes achieved have been recognized both within Peru and at the international level. The following are some of the aspects which should be borne in mind:

1. Significant progress in the national pacification process, which has led to a drastic reduction in the violence which mainly affected the civilian population. It should be emphasized that the capture of the principal leaders of the terrorist groups was achieved by wholly peaceful means.

2. The willingness of the Peruvian Government to collaborate and cooperate with all institutions in the United Nations and Inter-American systems for the protection and promotion of human rights, especially with regard to the handling of complaints received.

3. Constant diminution of the number of complaints.

A. Working Group on Enforced or Involuntary Disappearances - 1989, 404 cases reported; 1990, 231 cases; 1991, 117 cases; 1991, 112 cases; 1993, 10 cases; at the time this document was written, only three cases had been reported; in two of these, the investigation undertaken to date has shown that persons already identified were responsible and they will be tried for the events mentioned in the complaint.

During its 42nd Session (9-13 May 1994), the Group informed the Peruvian Government that 11 cases had been resolved, as a result of information provided by the Government, and one case through information submitted by the plaintiff. As can be seen, cooperation on the part of the Peruvian Government is of the utmost importance, and this has been underlined in the report of the Working Group to the 50th Session of the Commission on Human Rights, in which paragraph 363 notes that, during 1993, 98 cases were resolved, 97 of them on the basis of information provided by the Government.

B. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions - At the invitation of the Peruvian Government, Mr. Ndiaye visited Peru from 24 May to 2 June 1993. His report confirms the significant reduction in complaints relating to alleged summary executions (paragraph 26) and shows that during the first half of 1992 complaints were received relating to 74 alleged cases, whereas during the same period in 1993 only 19 cases were recorded.

At the time of writing, the Peruvian Government has received the following communications:

1. A new communication on the La Cantuta case, which occurred in 1992, describing the severe punishment, which deprives the soldiers convicted of their freedom and imposes economic damages. The severity and rapidity of the sentence and the high rank of the soldiers concerned is proof of the Peruvian Government's determination not to leave violations unpunished.

2. Three complaints about alleged death threats concerning 14 persons for which the national authorities have taken the necessary precautions (none of the persons mentioned by the Special Rapporteur has suffered any incident whatsoever).

3. A complaint relating to the presumed assassination of 10 farmers in the Department of Junin alleged to have been committed by members of the Ronda Campesina in the area. It is thought that these unfortunate events are the result of internal conflict concerning land ownership among the population in the area.

4. A complain similar to one transmitted by the Group on Enforced or Involuntary Disappearances; those responsible have been identified and will be tried by the judicial authorities.

5. Four new complaints concerning events alleged to have occurred in 1993 (three cases) and 1994 (one case).

C. Working Group on Arbitrary Detention - The report of the Working Group to the 50th Session of the Commission on Human Rights contains two resolutions concerning Peru.

1. One of the resolutions states "That planning armed conspiracy cannot be regarded as legitimate exercise of the right to freedom of association, expression or opinion or participation in political life, and that it constitutes an offence in all legislations and political systems. Accordingly, the detention cannot be considered arbitrary..." (Resolution 50/1993, paragraph 5(d)).

2. The second resolution, 42/1993, notes that the detention of Fernando Ruiz Conejo is arbitrary. He was freed on 7 January 1994.

At the time of writing, two communications have been received from the Working Group concerning eight cases involving 22 persons. The competent national authorities are investigating the case, however, the Peruvian Government wishes to state that the detention is consistent with the laws in force in Peru and is for the purpose of carrying out the necessary investigation, and that the human rights and fundamental freedoms of those detained have been strictly respected. The Peruvian State cannot neglect its obligation to carry out an investigation into all persons suspected of participation in terrorist activities. Likewise, Peru confirms that if the relevant legal proceedings do not prove the guilt of those accused, they will be freed.

In this connection, attention should be drawn to the recent approval by the Democratic Constituent Congress of a law submitted by the Executive on the creation of a Commission responsible for considering and assessing the case of citizens allegedly detained unjustly in accordance with the law currently in force. This Commission will be composed of officials from both the Executive and the Legislative, thereby underlining the unequivocal political will to deal with situations alleged to be unjust, without interfering with the Judiciary, in pursuit of the common objective of respect and guarantees for the human rights of the population as a whole.

D. Special Rapporteur on the Question of Torture. The report submitted by the Special Rapporteur to the 50th Session of the Commission on Human Rights mentions only six cases concerning events alleged to have occurred in 1993, the remainder are cases already referred to in 1991 and 1992, and even 1990. With this precision, the Peruvian Government affirms that it does not intend to neglect its obligation to investigate these cases and, where appropriate, punish those responsible for violating human rights in past years, but it considers that it might be confusing to include cases relating to previous years in an annual report.

It is important for the experts on the Sub-Commission to note that Peru gives priority to the elimination of the practice of torture. The Government set up a High-Level Multisectoral Commission to draw up a report on the application of the Convention against Torture. Its report went beyond consideration of all the legal aspects and included specific cases cited by the Special Rapporteur. The report has already been officially submitted to the Committee and will be sustained shortly, in strict conformity with the most recent technical recommendations by the Centre for Human Rights. It fully covers all the Committee's specific concerns, explaining the obstacles encountered and citing the views of the most credible national non-governmental organizations.

4. The greater flexibility of anti-terrorist legislation. In the light of the progress made in nationwide pacification, in November 1993 the first modification of the Anti-Terrorist Law was adopted. Decree Law No. 26248, which in many respects follows recommendations made by national non-governmental organizations, *inter alia* rescinds the prohibition on Habeas Corpus and *amparo* proceedings by those accused of terrorism and treason; Decree Law No. 25728, which allowed conviction *in absentia*, has been repealed; the prohibition which prevented lawyers from defending more than one person accused of terrorism has been rescinded.

At present, a Special Committee of the Lima College of Lawyers is studying substitute modifications to anti-terrorist legislation in relation to criminal aspects, proceedings and imprisonment. The Committee's final report will be submitted to the Democratic Constituent Congress for any amendments needed.

5. The establishment of the National Register of Prisoners, under the responsibility of the Office of the Attorney General. The Register allows unrestricted access by the public at large and its purpose is to provide information on the legal situation of all prisoners. It has been drawn up with the support of the Inter-American Development Agency and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

The objective is to ensure that police investigation of persons suspected of terrorist acts is more transparent; the Register will also allow and facilitate better investigation by the Office of the Attorney General and the follow-up of complaints for alleged violations of human rights.

6. The far-reaching material and administrative reform of prisons in Peru. As a result of the radical changes which have taken place, the inhuman and filthy conditions in prisons in Peru have given way to prisons with levels of infrastructure and maintenance that are consistent with human dignity.

7. Officials of the International Committee of the Red Cross enjoy unrestricted access to all prisons in Peru. The impasse which occurred in June as a result of action by the armed forces in the Alto Huallaga area was overcome through dialogue and respect for the autonomy and independence of the ICRC, whose humanitarian and apolitical work is appreciated by the Government of Peru.

8. The question of the administration of justice in developing countries is one of the most serious issues as far as the relationship between the State and the private citizen is concerned. Problems of a structural nature have in most cases led to slow and corrupt judicial procedures subject to political authority and in many instances this has meant that society as a whole views the Judiciary as an inefficient and untrustworthy institution.

This picture was not unfamiliar in Peru, which also had to confront terrorism and its constant threat, the drugs traffic and its significant potential for corruption.

The Peruvian Government has pursued action to strengthen and modernize the Judiciary, giving it sufficient resources and an adequate degree of security so that its work can become more efficient and restore the citizens' faith in the Judiciary, which is the guarantor of the rule of law.

The Peruvian Government has created the Panel of Judges as the body responsible for regularizing the appointment of judges and prosecutors and for assessing requests for rehabilitation by members dismissed after 5 April 1992, and it is composed of jurists whose private and professional reputations are irreproachable.

In a process whose transparency and equity have been recognized by all political sectors, in December 1993 and July 1994, the Panel appointed the Supreme and High-Level magistrates and prosecutors respectively, who are carrying out their tasks with full independence from the other powers.

9. The Law on Repentance. In May 1993, the Peruvian Government enacted a provision whereby benefits were granted to those accused or convicted of terrorism. These socio-legal measures are mainly aimed at eliminating terrorist groups by using legal resources and achieving the reintegration into society of persons who for any reason took part in terrorism, giving them the corresponding opportunities.